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To: Senate Committee on Government Operations

From: Christina Sivret, Executive Director, State Ethics Commission

Date: March 29, 2023

Re: H. 429

Overview

Financial disclosure requirements are relatively new to Vermont, with candidate and executive officer financial disclosure requirements only coming into force in 2017. The implementation of these requirements came on the heels of Vermont receiving an “F” grade from the [Center for Public Integrity](#) for judicial, legislative, and executive accountability. At the time, Vermont was ranked 49th out of 50 states for legislative accountability. Only Michigan, which had no legislative financial disclosure requirement at all, ranked lower.¹

Financial disclosure is an important and necessary part of any governmental ethics program. It provides transparency and ensures public trust and confidence in governmental decision-making. Further, it provides an opportunity for government officials, and candidates for public office, to recognize and cure potential conflicts of interest before they turn into actual, problematic conflicts.

¹ Through a public ballot initiative, Michigan now requires financial disclosures of public servants and candidates. In a more recent survey by the Center for Integrity (one that took place in 2020, after Vermont established the Ethics Commission), Vermont ranked 41st in the [national SWAMP index of anti-corruption laws](#).

Vermont now requires modest financial disclosures for certain categories of public servants, including candidates for statewide office, candidates for state legislature, statewide elected officers, and executive officers. However, among the 48 states that currently require disclosures, Vermont is the only one that provides no statutory sanctions at all for failure to file a required financial disclosure.

Despite financial disclosure being a legal requirement, the lack of a penalty creates a system of voluntary compliance, which does not always bring the desired results. For example, in 2018, the first election cycle after the financial disclosure requirement was implemented, approximately one fifth of all House members failed to file their candidate disclosures on time.² In 2023, the Ethics Commission received only a handful of executive officer disclosures prior to the statutory deadline.

HB. 429

House Bill No. 429 proposes modest penalties for candidates who fail to file a required financial disclosure with or fail to file it on time.

- Following notice of delinquency sent by the State Ethics Commission the filer will have five (5) working days from the date of notice to cure the delinquency;
- Beginning six (6) working days from the date of notice, the delinquent filer shall pay a \$10 penalty for each day the disclosure remains delinquent. The total penalty imposed will not exceed \$1,000;
- The Commission may reduce or waive any financial penalty for good cause;
- Any candidate who fails to file a financial disclosure with intent to defraud, falsify, conceal or cover up a material fact, or files a financial disclosure with false, incomplete, or misleading information with intent to defraud, falsify, conceal or cover up a material fact, will be violation of 13 V.S.A. § 3016, and existing criminal statute related to false claims;
- Any future complaints alleging potential violations of 13 V.S.A. § 3016 will be referred to the Attorney General for possible investigation.

The Ethics Commission considers the establishment of a penalty framework for required financial disclosures to be an essential next step as Vermont builds its governmental ethics framework. When the Ethics Commission was established in 2017, the vision was for it to have independent investigatory and enforcement powers tied to a robust state code of ethics. Six years later, the Commission has no investigatory or enforcement powers, and only within the last ten months has a non-binding state Code of Ethics gone into effect. While this is something to celebrate, the Ethics Commission urges the Committee not to lose sight of the fact that Vermont remains far, far behind other states – many of who got their start in the 1970's - when it comes to governmental ethics. The proposed penalties for failure to file are modest penalties tied to a simple form, and precisely for this reason, a lack of action on this issue would signal that governmental ethics are not a priority in Vermont.

² See [article, "Some Legislators' Financial Disclosure Forms Were Late," Seven Day \(Flanders, C.; Jan. 7, 2020\)](#). More recent numbers on late filing are not available.

FAQs

What is purpose of financial disclosure

Financial disclosure requirements satisfy a number of democratic and “good government” principles. They:

1. Reinforce public confidence in the integrity of government decisions.
2. Allow public servants and members of the public the opportunity to recognize and identify potential conflicts in advance.
3. Allow public servants opportunity to “cure” potential conflicts of interest before they manifest into full-blown conflicts.
4. Serve as general reminder to public servants of principles of governmental ethics.
5. Through the publication of the financial disclosures, allow a public “check” on accountability, further enhancing public confidence in governmental decision-making.
6. For elective candidates – particularly those who would be new to Vermont government service – disclosure provides an introduction to the state’s ethics requirements and assists those candidates in self- identifying financial interests that may give rise to a future conflict of interest or the appearance of a conflict of interest.

As stated by the *American Law Institute*:

“Disclosure by public servants of financial and other information is a key component of most government ethics systems. Disclosure reminds public servants of ethics principles, detects and deters conflicts of interests, facilitates enforcement of ethics rules, and promotes public confidence in government. Transparency is one of the most important principles underlying a representative democracy, and ethics rules that enhance transparency not only improve the quality of government and the ethical commitments of public servants but also reinforce public confidence in government. Public confidence in government in turn is critical to the continued public support that is the ultimate foundation of our representative democracy.”

American Law Institute, *Principles of Law: Government Ethics*, Tentative Draft No. 3, Ch. 6 (Disclosure), Introductory Note (April 9, 2021).

How are legislative/candidate filing requirements handled in other states?

In a majority of states, financial disclosure forms – including those of legislators and/or candidates for legislature – are filed with either an independent state agency, or with an office of the executive branch. In a minority of states, legislative financial disclosure forms are filed with the legislative chamber of the filer.

In New England, for example, all other states require that legislators (and/or candidates for legislature) file their financial disclosure with an independent agency, or with the Secretary of State. New Hampshire – which does not have an independent commission – requires filing with the Secretary of State, but allows legislators to opt to file with their respective chambers, which then forwards copies to the Secretary of State for publication. (See Attachment 1 for specific Code provisions).

How do other states enforce the financial disclosure filing requirement for legislators (and/or candidates for the legislature)?

In a majority of states, filings for legislators (or candidates for legislature) are enforced by an independent agency or an office of the executive branch.

Nearly all states have statutory provisions that state that “knowing” or “willful” violations may be addressed criminally. Thus, in nearly all states, intentional failures to file are enforced by the criminal authorities, which typically fall under the executive branch.

A majority of the states also enforce the filings administratively – the independent agency or executive branch agency may impose a fine for the failure to file the for as required. (See Attachment 2 – 50-State Summary of Financial Disclosure Requirements).

In New England, Connecticut, Maine, Massachusetts, and Rhode Island enforce their filing requirement through independent agencies. The independent agencies have the authority to impose fines on required filers, including legislators. In each of these states, the independent agency falls nominally under the executive branch. New Hampshire, which does not have an independent agency, does not enforce forms through an administrative process. The only enforcement in New Hampshire is through the criminal process.

How does the federal government handle financial disclosures for Representatives and Senators?

Federal legislative disclosures – for both legislators and for candidates for legislative office - are mandated by the Governmental Ethics Act of 1978.

Candidates for Representative and Senate must file the financial disclosure with the Federal Elections Commission. Senators and Members of the House of Representatives must file with their respective chambers. All forms must be public and published.

All disclosure filings – including for federal legislators - are enforced civilly by the Attorney General.

Attachment 1 – 50-State Financial Chart

| | Who must file | Administrative penalties for non-filing | Max admin penalty for non-filing | Other penalties for non-filing | Potential criminal penalties |
|----------------|---|---|----------------------------------|--|--|
| Alabama | State Elected Officers; County Officers; Municipal Officers; legislators; Appointees; All State Employees Earning Over \$75K; Managers and administrators (Ala Code § 36-25-14); Candidates for elective office (Ala Code § 36-25-15) | Up to \$10 per day | \$1,000 | Candidates for state office may be removed from ballot (Ala Code § 36-25-15) | "knowing" violation is Class 3 misdemeanor (Ala Code § 36-25-27) |
| Alaska | Public officials; legislators; | \$10 per day (AS) | No max | Candidates may be | "Knowing" failure to file is |

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| | candidates for state elective office; candidates for municipal office | 39.50.135; AS 24.60.240) | | removed from ballot; appointed and hired public officials in Exec branch may not take office or be confirmed by the legislature. AS 39.50.060; 39.50.070; Legislators may not be seated (AS 24.60.240) | misdemeanor - \$100 to \$1000 criminal penalty. AS 39.50.060 |
| Arizona | Statewide elected officials; legislators; judges (except Supreme Court); candidates for statewide elective office (ARS § 38-541) | \$50 per day (ARS § 38-544) | \$500 (ARS § 38-544) | | Class 1 misdemeanor for "knowing" failure to file (ARS § 38-544) |
| Arkansas | Public officials; legislators; candidates for office; district judges; city attorneys; appointees; school boards (AR Code § 21-8-701) | | | | Class B violation for "knowing" violation (AR Code § 21-8-302) |
| California | elected officials; legislators; candidates for state, county and local office; members of commissions; appointees; city mayors and other chief officials; judges; public officials who manage state funds (Cal Gov. Code § 87201-87207) | \$10 per day | \$100 | Up to \$5,000 | Class 1 misdemeanor for "knowing" failure to file (Cal Gov. Code § 91000) |
| Colorado | Statewide elected officials; judges; legislators; district attorneys; state board of education; public utilities commission (CRS § 24-6-202) | \$50 per day (CRS § 1-45-111.5) | No max | | "Willful" violations are misdemeanor; mandatory criminal penalty of \$1,000 - \$5,000 (CRS § 24-6-202) |
| Connecticut | Statewide elected officials; legislators; department heads; public officials with substantial authority; public utilities commission; boards and commissions; quasi-public agencies | \$10 per day | \$10,000 | | |
| Delaware | elected officials; candidates for state, county and | | | | "Willful" violation is |

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| | local office; legislators; members of commissions; appointees; chief officials; judges; cabinet secretaries; executive branch division directors | | | | class B misdemeanor |
| Florida | legislative branch employees; elected officials; appointees; department heads; local officials; legislators; candidates for state office; members of commissions; appointees; chief officials; judges; cabinet secretaries; executive branch division directors; state university officials (Fla Stat § 112.3145) | \$25 per day (Fla Stat § 112.3145) | \$1,500 | Civil penalty of up to \$10,000 if form is more than 60 days late (Fla Stat § 112.317); potential censure and loss of position | |
| Georgia | Constitutional officers; elected officials; legislators; candidates for elected office; executive heads of agencies; executive directors of boards and commissions; elected county and municipal officials (Ga Stat § 21-5-3) | \$125 late fee; \$250 penalty after 15 days late; \$1,000 penalty after 45 days late (Ga Stat § 21-5-50) | | Up to \$1,000 for first violation; \$10,000 for second violation; \$25,000 for third violation (Ga Stat § 21-5-6) | "Knowing" violation is a misdemeanor (Ga Stat § § 21-5-9) |
| Hawaii | elected officials; department heads; university executives; department of education; legislators;; administrative staff of judicial branch; board and commissions; candidates for state elective office (HRS § 84-17) | \$75 for late form; additional \$10 per day starting on 10th day form is late | No max | Up to \$1,000 after finding of violation (HRS § 84-39) | |
| Idaho | No one | N/A | N/A | N/A | N/A |
| Illinois | Elected officials; candidates for state office; commissions and boards; legislators; appointees; judges; heads of departments and agencies (5 ILCS § 420/4A-101) | \$15; \$100 per day after form is 15 days late (5 ILCS 420/4A-106) | No max | After notice, "ineligibility for, or forfeiture of, office or position of employment" (5 ILCS § 420/4A-107) | False or incomplete forms are class A misdemeanor (5 ILCS 420/4A-107) |
| Indiana | Constitutional officers; department heads; candidates; appointing | None for legislators; \$10 per day for each | \$1,000 (executive branch only) | | "knowing" violation is class A misdemeanor |

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| | authorities; legislators; officers and employees with purchasing authority (IC 4-2-6-1) | day form is late (IC 4-2-6-8) | | | (exec branch only) (IC 4-2-6-8) | |
| Iowa | Statewide elected officials; department and agency heads; heads of commissions and boards; legislators; members of specific agencies; candidates; legislative employees (IA Code § 68B.35) | \$25 for 1-14 days late; \$50 for 15-30 days late; \$100 for 31 days and over. (IA Admin Reg § 351-7.5(68B)) | | | Up to \$2,000 (IA Code § 68B.32D) | "Intentional" violation is "serious misdemeanor" |
| Kansas | Elected officials; candidates for state office; legislators; heads of agencies and their officers; appointees; legislators; general counsels of state agencies; private consultants who evaluate contract bids (KSA § 46-247) | \$10 per day (KSA § 46-280) (after notice + 5 days) | \$300 | | For legislators, assembly may consider penalties and censure following ethics hearing | Failure to file "true" statement in class B misdemeanor (KSA § 46-251) |
| Kentucky | candidates and nominees for general assembly; legislative branch management (KRS § 6.781); statewide constitutional officers; department heads and "major management personnel"; legislators; candidates for statewide office (KRS § 11A.010) | \$100 per day (KRS § 6.797) (following notice + 10 days) | \$1,000 | | Up to \$5,000 (exec branch only) (KRS § 11A.100) | "Intentional" violation is class A misdemeanor (KRS § 6.797) |
| Louisiana | Statewide elected officers; secretaries of agencies; various specific officers; legislators; boards and commissions (LA RS 42:1124) | \$100 per day for legislators (following notice and opportunity to file) (LA RS 42:1114.3; 42:1124.6); \$500 per day for all statewide officers (following notice and opportunity to cure). | | | For "willful" failure: \$1,00-\$5,00 (for 2nd violation: \$1,00 to \$10,000) | |
| Maine | Constitutional officers; elected executive branch members; | \$100 (following notice + 15 days) | | | | Intentional violation is class E crime |

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| | legislators; appointees; state auditor 5 MRS § 19) | | | | |
| Maryland | executive branch managers; elected officials; legislators; candidates; persons designated by their agencies (5 Md Stat § 5-103; 5 Md Stat § 601); certain local officials (Md Stat § 5-809); school boards (Md Stat § 5-817); commissioners (Md Stat § 5-824); applicants for commissions (Md Stat § 5-825) | | | potential censure from legislature (legislators only) (5 Md Stat § 511 et seq.); \$5,000 per day (if ordered by court) (exec branch only) (Md Stat § 5-902); no salary from state until in compliance (exec branch only) (Md Stat § 5-904) | "willful" violation is misdemeanor. Up to 1 year in prison; up to \$10,000 fine (Md Stat § 5-903) |
| Massachusetts | elected officials; public officials and employees with decision-making authority; legislators; candidates (GL 268B, §§ 1, 5) | up to \$10,000 civil penalty per violation after hearing (GL 268B, § 4) | | no state compensation to public employees until they file (GL 268B, § 5) | |
| Michigan | members of legislature, governor, lieutenant governor, secretary of state, and attorney general | TBD | TBD | TBD | TBD |
| Minnesota | constitutional officers; legislative staff officers; legislators; commissioners; department heads; exec branch members overseeing admin hearings; deputy department heads; various other state administrators, managers, and employees | \$5 per day after 10 days late (MN Stat § 10A.09) | \$100 | Up to \$1,000 if no filing after notice | |
| Mississippi | elected officials; legislators; school boards; candidates; department heads; commissions and boards; other specified agencies (MS Code § 25-4-25) | \$10 per day, after notice + 45 days (MS Code § 25-4-29) | No max | Following hearing, up to \$10,000 plus censure (MS Code § 25-4-109) | Following notice and passage of 1 year, violation is misdemeanor with up to 1 year in jail and \$10,000 fine (MS Code § 25-4-31) |
| Missouri | Statewide elected officials; candidates; judges; some boards and commissions; state employees with decision-making authority; legislators; | \$10 per day (Mo RS §§ 105.492 and 105.963.3) | No max | Suspension from office or position, after notice + 30 days | |

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| | immediate family of any of the above if the family member does business with the filers state agency (Mo RS § 105.483) | | | | |
| Montana | state officeholders; legislators; judges; candidates; appointees (MC § 2-2-106) | \$50 - \$1,000 (following hearing) (MC § 2-2-136) | \$1,000 | | |
| Nebraska | statewide officers; legislators; university officials; department heads; county elected officers; mayor and city council of Omaha and Lincoln; certain state employees with decision-making authority (NE Stat § 49-1493) | \$25 per day | \$750 | Up to \$5,000, following hearing (NE Stat § 49-14,126) | |
| Nevada | Elected officials; legislators; candidates; judges; appointees (NRS § 281.572) | \$25; \$50 for 1-19 days late; \$100 for 20-29 days late; \$250 for 30-44 days late; \$2,000 if 45 days late or more (following notice) (NRS 281.581) | \$2,000 | court costs and attorney fees if violation is enforced through civil action | |
| New Hampshire | candidates for state and county office; legislators; appointees; agency heads; designated employees; elected state and county officials (NH Stat § 15-A:3) | | | | "knowing" violation is misdemeanor (NH Stat § 14-B:10 - legislators; § 15-A:7 - exec branch) |
| New Jersey | elected officials; department heads; casino employees and managers; legislators; appointees | \$50 per day (NJSA § 52:13D-21) | No max | \$500 to \$10,000, following hearing (NJSA § 52:1D-21) | |
| New Mexico | state officers; elected officials; legislators; appointees; agency heads (NM Stat § 10-16-1 et seq.; 1.8.4.10.B(1)(a) NMAC) | \$50 per day (NM Stat § 10-16A-6) | \$5,000 | candidates who fail to file do not qualify for ballot; appointees who fail may not take office | |
| New York | statewide elected officials; state officers; legislative employees; | | | Up to \$40,000 for "knowing" violation (Pub. Officers Law § | "knowing" violation is class A misdemeanor |

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| | candidates; political party chairpersons (Pub. Officers Law § 73a) | | | 73a); delinquent filers identified publicly | |
| North Carolina | elected officers; agency heads; appointees (NC Stat § 138A-21); legislators; employees with incomes over \$60,000 (NC Stat § 138A-22); candidates | \$250 if form is within 30 days after notice is sent | | Failure to file within 60 days constitutes "malfeasance," which is grounds for dismissal for unelected officials and employees (or, for legislators, sanctions) | |
| North Dakota | Candidates (ND Cent. Code § 16.1-09-02) | | | Candidate may not appear on ballot if not filed | |
| Ohio | state elected officials; county elected officials; city elected officials; candidates for state, county, and city elected office; agency heads, deputies, and directors; casino board; higher education officials; legislators; multiple various identified employees; judges and candidates for judge (ORC § 102.02) | | | | "knowing" failure to file is 4th degree misdemeanor |
| Oklahoma | legislators; elected state officers (OK Rule 3.16) | Up to \$1,000 per violation (OK Rule 6.19) | | Following finding of violation by court: \$5K - \$25K for 1st violation; \$10K - \$50K for 2nd; \$25K - \$100K for 3rd (OK Rule 6.13); plus attorney fees and court costs (OK Rule 6.14) | |
| Oregon | state elected officers; judges; candidates; legislators; legislative staff officers; heads and directors of agencies; deputies of the constitutional officers; elected county and city officials; county and city zoning commissions; higher education officials; most commissions and boards (OL § 244.050) | \$10 per day for first 14 days; \$50 per day for each day after (OL 244.350) | \$5,000 | Following hearing, civil penalty up to \$1,000 | |

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| Pennsylvania | elected officials; legislators; public employees with decision-making authority regarding state money; appointees; candidates (65 PACSA § 1102) | \$25 per day (65 PACSA § 1109) | \$250 | No public official may take office, or receive public compensation until form is filed | violation may be misdemeanor |
| Rhode Island | elected officials; appointees; all officials and employees in "major decision-making" roles; legislators; municipal elected officials; municipal appointed officials with decision-making authority; candidates for state and municipal office (RI Gen Laws § 36-14-16) | | | Up to \$25,000, following hearing; removal from office (for unelected, unappointed violators) | "knowing and willful" violations are misdemeanors |
| South Carolina | elected officials; appointees; candidates; boards and commissions; heads and chiefs of each agency; city chiefs; legislators; county chiefs; education officials (SC Stat § 8-13-1110) | \$100 after 5 days; then, following notice, \$10 per day for the next 10 days; then \$100 per day (SC Stat § 8-13-1510) | \$5,000 | | After max penalty has been imposed, violation is a misdemeanor with minimum penalty of \$500 or 30 days in jail; subsequent offenses have higher maximum penalties |
| South Dakota | state, federal, county and local candidates; state, county, and local elected officials; judges; appointees (SDCL §§ 12-25-29.1; 12-25-30; 3-1A-2 thru 4) | | | | any violation is petty offense; intentional violation is class 2 misdemeanor |
| Tennessee | governor; governor's cabinet and staff; constitutional officers; judges; elected officials; candidates; legislators; appointees; higher education officials; various identified officials and employees (see TCA § 8-50-504) | \$25 per day, following notice + 5 days (TCA § 3-6-205); after notice + 35 days, maximum allowable penalties per day | \$750 if filed within 35 days; \$10,000 if filed after 35 days | candidates cannot qualify for ballot if they fail to file | |
| Texas | elected officials; legislators; appointees; agency heads; candidates (TX Gov Code § 572.002) | \$500; if penalty unpaid after 10 days following | \$10,000 (if \$00 is unpaid) | | "knowing and willful" violation is class B misdemeanor |

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| | | notice, penalty to be determined by Commission | | | |
| Utah | State elected officials; members of the Board of Education; legislators; candidates for legislature and state office (Utah Code § 20A-11-1603) | \$100 (Utah Code § 20A-11-1604) | | | "knowing" violation is misdemeanor |
| Virginia | Governor; Lt governor; AG; judges; executive officers and employees deemed "necessary" by governor; legislators; constitutional officers; boards and commissions; local elected officials; school boards; persons holding "positions of trust" (VA Stat §§ 2.2-3114 and 3116) | \$250 | \$250 | on finding of "knowing" violation, judge may order forfeiture of office or employment | "knowing" violation is class 1 misdemeanor (VA Stat § 2.2-3120) |
| Washington | elected officials; legislators; candidates; agency directors; boards and commissions; legislative and governor's staff; higher education officials | \$10 per day (RCW § 42.17A.750) | | following a hearing, up to \$10,000; if judge finds that the failure to file affected election, judge can void the results of the election | violations with "malice" are misdemeanors |
| West Virginia | statewide, county and municipal elected officials; boards of education; boards and commissions; appointees; legislators; secretaries, commissioners, deputies, and directors of agencies; department heads; candidates for state, county, and municipal offices (WV Code § 6B-2-6) | | | | "knowing" violation is misdemeanor, with up to \$1,000 fine and/or 1 year in jail |
| Wisconsin | elected officials; candidates; department heads; boards and commissions; legislators; agency administrators; other employees with | after 15 days: \$100, and \$100 every 15 days thereafter | | after 30 days late, state compensation is withheld; candidates cannot qualify for ballot if they | |

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| | decision-making authority | | | fail to file (Wis Stat § 19.43) | |
| Wyoming | state elected officials; legislators; | | | | failure to file is a misdemeanor |